



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 641 of 2012**

**MARGARET GWAHALA YANANA.....CLAIMANT**

**VERSUS**

**VENUS SECURITY SERVICES.....RESPONDENT**

**AWARD**

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**MARGARET GUSAHALA YAHANA** the Claimant herein has filed this claim against the Respondent **VENUS SECURITY SERVICES** by a memorandum of Claim filed in Court on 31<sup>st</sup> May 2012. The Memorandum of Claim is undated and there is no verifying affidavit file with the claim. She prays for severance pay of shs 3,375,000 , 1 months salary in lieu of notice of kshs 9,450.00, Annual leave of kSHS. 9,450.00, house allowance of kshs 12,150/- and salary arrears of kshs 4,500.00. She further claims kSHS. 54,000.00 as compensation in unfair termination making her total claim kshs 87,975.00.

The Respondent filed a reply on 31<sup>st</sup> May 2012 through **RICHARD MURICHO WANJALA**, a director. The Respondent admits employing the Claimant first for a period of 3 months to guard a building construction site. The employment was stopped when the contract expired upon the site being handed over to the developer by the contractor who had hired the Respondent to guard the site. The Claimant was thereafter assigned duties at Industrial Area but was unable to work there after complaining of the long distance. The Claimant stayed out of work in 4 months until the Respondent got a new assignment in Biashara Street where the Claimant was assigned duties. The Respondent states in the Reply Memorandum that the claimant worked at the new assignment until January 2012 when the assignment was terminated due to the claimant's absence from duty. The Respondent further states in the Memorandum of Reply that the Claimant failed to take up a new assignment at 1<sup>st</sup> Parklands Avenue. The Respondent alleges that the claims in the Memorandum of claim are false and asks the Court to dismiss the claim.

The Case was mentioned on 5<sup>th</sup> June 2012 and fixed in hearing on 30<sup>th</sup> July 2012 when the case was heard. The Claimant was present in person while Mr.Wanjala attended Court on behalf of the Respondent.

In her testimony the Claimant stated that she started working for the Respondent on 13<sup>th</sup> August 2010 at Duruma Road where she worked until October when she was transferred to Industrial Area and then to Biashara Street. She stated that she was given permission to travel home for a funeral in December 2011 and reported back on 27<sup>th</sup> December 2011. That she worked until 14<sup>th</sup> January 2012 when she was informed by other askaris working at the site that the contract she was working on had been

terminated. She thereafter called Mr. Wanjala, her employer to ask for payment but Mr Wanjala declined on the ground that she had caused him to lose his contract.

The Respondent through Mr. Richard Muricho admitted that the Claimant worked with the Respondent but denied that she was dismissed or terminated by the Company. To the contrary he stated that she absconded duty leading to the loss of the contract at while she was working. He further stated that he has invited her to go back to work in a new contract in Parklands but she has declined.

The main facts of the case are not in contention. Both parties are in agreement that the Claimant was employed by the Respondent as a security guard. What is in dispute is the period she worked and the manner in which she left employment.

From her testimony in Court the Claimants seems to be withholding some information. She was not straight forward when responding to questions from both the Respondent's representative and the Court.

Mr. Muricho on the other hand seemed to be telling the truth and I believe his testimony. From the pleadings and the testimony of the two witnesses who gave evidence, I gather that the Claimant was employed in August 2010, worked for 3 months then her employment was terminated when the contract she was working on expired. She was again employment in February 2011 but worked for a few days and left employment because the station was too far from where she lived. In May 2011, she was employed and worked until 12<sup>th</sup> December 2011 when she went on annual leave for 10 days reporting back on 22<sup>nd</sup> December 2011. She again worked from that date to 1<sup>st</sup> January 2012 when she called the employer to report that she had been admitted to Kenyatta National Hospital. She has not worked since then.

The Claimant has prayed for payment of the following;

1. Severance pay at Kshs 3,375.00
2. 1 months salary in lieu of notice at Kshs 4500
3. Annual leave at Kshs 9,450.00
4. House allowance at Kshs 12,150.00
5. Salary arrears of Kshs 4500.00
6. Compensation of Kshs 54,000.00

All these add up to a total of Kshs 87,975.00

I will handle each claim separately.

### **1. Severance pay**

The Claimant is not entitled to severance pay as this is only payable in the case of redundancy.

### **2. Payment in lieu of notice**

The Claimant is not entitled to payment in lieu of notice as she is the one who abandoned her employment.

### **3. Annual leave**

The Claimant worked for a total of 11 months. She is therefore entitled to 11 months leave of 19 days less 10 days leave taken in December 2011. This comes to kshs. 1350.00.

#### **4. House Allowance**

The Claimant is entitled to House allowance for the 11 months that she was in employment based on 15% of her monthly salary thus Kshs. 7425.00 in total.

#### **5. Salary Arrears**

The Respondent admitted that the Claimant's salary for December 2011 has not been paid. The Claimant is therefore entitled to the same at Kshs. 4500.00.

#### **6. Compensation for unfair termination**

As already stated above the Claimant was not terminated by the Respondent but abandoned her employment. The Respondents director gave evidence that he is ready to take her back but she has declined to take up the offer. The claim is therefore without merit and is rejected.

The court therefore awards the claimant the sum of **Kshs. 13,275.00** as specified under items 3, 4 and 5 above. The Respondent should pay the said sum to the Claimant within 30 days failing which the Claimant is free to apply for execution.

**Orders accordingly**

**DATED AT NAIROBI THE 19<sup>TH</sup> DAY OF SEPTEMBER 2012.**

**HON. LADY JUSTICE M. ONYANGO**

**JUDGE**

**In the presence of**

**Claimant:**

**Respondent:**